

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

GENE COLLINS, an individual doing business  
as SOUTHERN NEVADA FLAGGERS &  
BARRICADES, et al.,

Plaintiffs,

v.

LABORERS INTERNATIONAL UNION OF  
NORTH AMERICA LOCAL NO. 872, et al.,

Defendants.

2:11-cv-0524-LDG-LRL

**ORDER**

Defendants have filed a reinstated motion for summary judgment (#74, response #86, reply #95, plaintiffs' supplemental brief in opposition #123, defendants' reply to plaintiffs' supplemental brief in opposition #124, plaintiffs' reply to defendants' supplemental brief in opposition #125).

The court addresses whether plaintiffs' claims are subject to arbitration. Plaintiffs' third, fourth, and fifth causes of action allege breach of the Master Labor Agreement between Local 872 and the Associated General Contractor Association, and plaintiffs, who became signatories when they joined Local 872. That agreement governed the making of payments to the Trust Fund; the Trust Fund's notice to the Association and any general contractor, on reasonable belief, of a signatory employer's delinquency to the Fund; the provisions requiring a general contractor to

1 withhold payments to the delinquent employer, and to pay the monies over to the Fund until the  
2 delinquency is cured. The Master Labor Agreement also provided Local 872 the right to withdraw  
3 employees from any job to enforce the payment of wages or contributions to the Fund for its direct  
4 employees.

5 The Master Labor Agreement contains the following clause:

6 Except as otherwise provided in the Agreement, and except for a) jurisdictional disputes;  
7 and b) claims, disputes and demand arising out of the Contractor's fringe benefit  
8 obligations, set forth in Articles XXIII and XXIV, all disputes or grievances arising out of  
9 the interpretation or application of this Agreement shall be submitted for determination and  
10 be resolved by the procedures set forth in this Article. The employer shall have the right to  
11 file a grievance under this Article, and further agrees to waive its right to file any lawsuit  
12 alleging breach of contract. (emphasis added)

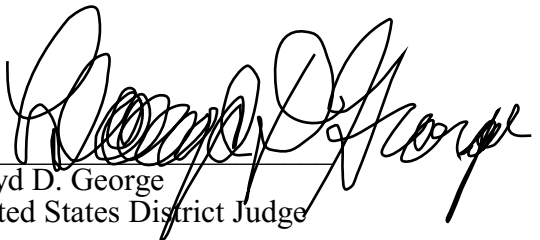
13 The grievance procedure provides for grievances that cannot be settled with a meeting  
14 between the union and contractor to be submitted to a four-member board of adjustment whose  
15 majority vote would be final. If the board of adjustment fails to reach a majority decision within  
16 three days after referral of the issue, either party may refer the matter to arbitration for a final and  
17 binding decision.

18 Plainly, plaintiffs' causes of action for breach of the Master Labor Agreement "aris[e] out  
19 of the interpretation or application of [the] Agreement" itself. Plaintiffs, in their arguments, go so  
20 far as to even admit that plain language of the agreement was intended to be limited to contractual  
21 issues. #123 at 6, 7. Claims three, four and five of plaintiffs' complaint are just that—allegations  
22 of breach of the Master Labor Agreement, which cover the payment, delinquency and enforcement  
23 procedures related to payments to the Trust Fund. That the alleged reason for the breach, racial  
24 discrimination, doesn't change that. These claims, therefore, are subject to arbitration, and the  
25 court will stay the case pending resolution of the arbitration. See 9 U.S.C. § 3.

26 THE COURT HEREBY ORDERS that claims three, four and five of plaintiffs' complaint  
shall be subject to the procedures of the Master Labor Agreement regarding arbitration.

1 THE COURT HEREBY ORDERS that defendants' motion for summary judgment (#74) is  
2 DENIED without prejudice to its refiling following resolution of the arbitration.

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4 Dated this 26 day of March, 2015.

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7 Lloyd D. George  
United States District Judge  
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